IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5757 OF 2005

Dattaram Nana Sawant & Ors. ..Petitioners.
Versus
Sudhir Manohar Manjrekar ..Respondent.

Mr. S.B.Shetye for the Petitioners.
Mr. Sudhir Prabhu for G.H.Keluskar for the Respondent.

CORAM : S. A. BOBDE, J.
DATED : 13TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. Prabhu, Advocate, waives service of rule for the respondent. Heard by consent.

2. By this petition, the petitioners, who are defendants, have challenged the appointment of a court commissioner under order 26 of the Code of Civil Procedure.

3. The respondent plaintiff has sued the petitioners for a declaration and permanent injunction. In the suit, the respondent has sought an injunction, restraining the petitioners from obstructing path way, which is shown in the map attached with the suit. The petitioners have denied the existence of the pathway. According to them, the pathway does not exist at all.

It is only for elucidating this aspect of the matter, the learned trial court has appointed a commissioner. The learned Civil Judge, Jr. Division has directed that the commission should be carried out strictly in the presence of both the parties by giving them a prior notice and he is directed to file his report alongwith the suitable map.

4. In the circumstances, I see no reason to interfere with the impugned order. Rule is discharged.

DT. 13.10.05 (S.A.BOBDE,J)

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